**NO. A24A1482**

In the

Court of Appeals of Georgia

CHELSE CAGLE,

Appellant,

v.

MIKE CARRUTH, *et. al.*,

Appellees.

On Appeal from the Superior Court of Walker County

Superior Court Case No. 23SUCV0643

# BRIEF OF APPELLEES

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# TABLE CONTENTS

# TABLE OF AUTHORITIES

## Cases



## Statutes



## Other

## PART ONE

## INTRODUCTION

In this quo warranto action, Appellants argue that the trial court erred in granting Appellee's motion for directed verdict after presentation of Appellants case in a non-jury trial.

Appellees, Mike Carruth ("Appellee Carruth") and Karen Harden ("Appellee Harden") (collectively, "board members"), are members of the Walker County Board of Education ("Board of Education"). The board members both have sons who work for the Walker County School System ("school system"). Appellant alleged that under O.C.G.A. § 20-2-51(4)(A) ("nepotism statute") the board members were not eligible to hold their positions because both have sons are "system administrative staff." The nepotism statute prohibits members of the Board of Education from holding office if they have a child employed as a "system administrative staff." However, the code does not define "system administrative staff," so the Georgia Department of Education leaves the definition up to each of the individual school systems in Georgia. The Walker County School System defines "system administrative staff" as the position of director or higher. Appellant argued that the board members' sons were "directors." Appellees argued that the sons were "coordinators" that get directions from "directors." Based upon

the pleadings filed by both parties and evidence presented by Appellant during the nonjury trial, the court granted Appellee's motion for directed verdict, finding that the nepotism statute does not prevent Appellants' employment as neither of their sons hold a position of director within the school system.

Appellant now appeals arguing that the trial court failed to use the "any evidence" test, that the motion for directed verdict was not specific, and that the trial court erroneously considered the pleading as part of his ruling. For the reasons set forth below, Appellants argument fails, and appeal should be denied.

## STATEMENT OF PROCEEDINGS BELOW

Appellees agree with the Appellants "B-Proceedings Below" and add that the type of trial was a nonjury trial. V3.

## STATEMENT OF MATERIAL FACTS

Since 2004, Appellee Carruth has been a member of the Walker County, Georgia Board of Education. V2-23. Since December 21, 2021, Appellee Harden has been a member of the Board of Education. *Id*. Justin Michael Carruth ("Justin") is Appellee Carruth's son. *Id*. Brandon Scott Harden ("Scott") is Appellee Harden's son. V2-24. Since July 1, 2021, Justin has been the "Coordinator of Secondary Curriculum/CTAE" for the School System. V2-23.

Since August 28, 2017, Scott has been the "Coordinator of Instructional Technology" for the School System. V2-24.

Appellant lives in Walker County and is a taxpayer. V3-11; V4. On September 22, 2023, Appellant filed an Application for Leave to File an Information in the Nature of Quo Warranto. V2-5. On December 19, 2023, the application was granted, and a nonjury trial was set for March 28, 2024. V2-12-17.

On January 15, 2024, Appellees filed a Motion to Dismiss. V2-26. The Motion to Dismissed included, among other things, an affidavit from the Superintendent and an affidavit from the school system's director of human resources. V2-44, 56. Both explain that the school system defines "system administrative staff" as position of directors and/or higher. *Id.* Both also explain that Justin and Scott hold titles of coordinators. *Id.* These affidavits were also included in the Appellees' Motion for Summary Judgment. V2-106, 113.

On March 28, 2024, prior to the nonjury trial, the court heard oral arguments regarding Appellees' motion for summary judgment. V3-2. Before oral arguments, the court stated: "I've read everything." *Id.* The court denied the motion for summary judgment and directed Appellant to call her first witness. V3-10.

During the trial, Appellant called three witnesses; one of which was Phyliss Hunter. V3. On direct examination, Ms. Hunter testified that "Justin is the director

of CTA and Scott is director of technology." V3-13. However, on cross examination, Ms. Hunter contradicted herself by saying that "Yes, they are called coordinators as well." V3-14. Ms. Hunter also agreed that Robyn Samples is a director, and that Ms. Samples has authority over Justin and Scott. *Id.*

Upon Appellant resting her case, Appellees moved for directed verdict. V3-24. The trial court granted the Appellees' motion for directed verdict and ruled:

> *The Court: Okay. The Court does find she has standing. I think the Exhibit 1 does grant her standing to it.*
>
> *I know there is a not really a dispute of fact, but what I think is very clear is the job description of the two sons. Okay? I don't think the plaintiff has met that burden to say they're a director.*
>
> *You can call, I mean, they call maintenance people sanitation engineers. That don't make them an engineer. So you can call a duck a bird or call them an elephant if you want. That doesn't make it change.*
>
> *So whether they're called director and I think Ms. Phyllis Hunter testified that their duties were different than their actual boss. Okay? They call them director and they call them coordinator.*
>
> *Robin Samples' job was more broad and had more duties. So there is a differential and based on the documents filed in the summary judgment, I'm going to grant the directed verdict.*
>
> V3-24-26.

On March 30, 2024, the trial court entered a written order granting the motion for directed verdict and dismissing Appellant's quo warranto with prejudice. V2-3. The order states "[t]he Court hereby find that, after presenting her

case, Plaintiff did not carry the burden of proof in this case because the board member's son's positions in the school system are not "system administrative staff' position within the meaning of O.C.G.A. § 20-2-51(4)(A). *Id.*

## PART TWO

## SUMMARY OF THE ARGUMENT

The trial court did not err in granting Appellees' motion for directed verdict because, sitting as trier of fact as well as law, the court had sufficient evidence to grant the motion. The court had the opportunity and authority to read all the pleadings and judge the credibility of Appellant's witnesses. Therefore, the trial court's judgment should not be disturbed and should be affirmed.

## STANDARD OF REVIEW

The trial court's ruling on a motion for involuntary dismissal will not be disturb if there is "any evidence" to support it. Magnus Homes, LLC v. DeRosa, 248 Ga. App. 31, 32 (2001). In a nonjury case, a motion for directed verdict (as well as the grant thereof) is treated as one for involuntary dismissal under O.C.G.A § 9-11-41(b). Kennery v. Mosteller,133 Ga. App 879, 880 (1975), citing, Pichulik v. Air Condition & Heating Service Co., 123 Ga. App 195, 196 (1971); See also, Drake v. Wallace, 259 Ga. App. 111, 112-113 (2003). A motion for involuntary

dismissal may be sustained even if the plaintiff has established a prima facie case. Pichulik at 195.

In a nonjury trial, the judge must weigh the evidence, but there is no obligation to construe the evidence in light most favorable to the nonmoving party. Drake at 112-113. "In all nonjury trials, the trial court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Magnus at 32.

## ARGUMENT

**The trial court's judgment should be affirmed because by applying the "any evidence" test the court had more than sufficient evidence after having read all the pleadings, listen to oral arguments, and had the authority to judge the creditability of Appellant's witnesses and case in chief.**

The trial court's order should be affirmed because the facts support the court's granting of the Appellees' motion for directed verdict or motion for involuntary dismissal. In a quo warranto action, to remove a public official from office, the burden of proof must be carried by the plaintiff. Gundy v. Balli, 362 Ga. App. 304, 308 (2022); *see also*, Anderson v. Poythress, 246 Ga. 435, 436 (1980);

Grimsely v. Morgan, 178 Ga. 40, 43 (1933). Appellant alleged that Appellees were in violation of the nepotism statute, O.C.G.A. § 20-2-51(4)(A). According to O.C.G.A. § 20-2-51, "no person who has an immediate family member sitting on a local board of education or serving as the local school superintendent or a principal, assistant principal, or system administrative staff in the local school system shall be eligible to serve as a member of such local board of education." O.C.G.A. § 20-2-51(4)(A), *incorporated in* State Board of Education Rule 160-5-1-.36. "System administrative staff" is not defined within the code, and the Georgia Department of Education leaves it to the individual school systems in Georgia to define. *See* Georgia Department of Education Guidance for SBOER 160-5.1.36. The Walker County school system defines "system administrative staff" as someone holding the position of "directors" or higher. V2-44, 56.

Here, Appellant's entire case revolves around these semantics: Appellants argued that Justin and Scott were "directors," and Appellees argued that Justin and Scott were "coordinators." On March 28, 2024, a bench trial was conducted. V3. The trial court had express power to adjudicate the case on the merits at the conclusion of the plaintiff's case. Pichulik at 196; Kennery at 880. There was no obligation to construe the evidence in light most favorable to the nonmoving party. Drake at 112-113. Appellant had the burden to prove that the Board Members' sons were "directors." V3-24-26.

Appellant called three witnesses, and, upon resting her case, Appellees moved for a directed verdict. V3-24. In a nonjury case, a motion for directed verdict (as well as the granting thereof) is treated as one for involuntary dismissal under O.C.G.A § 9-11-41(b). Kennery at 880. Therefore, Appellees' motion for directed verdict should be treated as a motion for involuntary dismissal.

A motion for involuntary dismissal may be sustained even if the plaintiff has established a prima facie case. Pichulik at 196. In a nonjury trial, the judge has express power to adjudicate the case on the merits at the conclusion of the plaintiff's case. *Id.* "In all nonjury trials, the trial court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Magnus at 32. The trial court's ruling on a motion for involuntary dismissal will not be disturbed if there is "any evidence" to support it. *Id.*

Here, applying the "any evidence' test, the trial court's ruling on a motion for involuntary dismissal should not be disturb because there was sufficient evidence to support its ruling. The trial court stated on the record, "I've read everything;" alluding to all the pleadings, including affidavits, that had been filed prior to the trial. V3-2. The trial court heard oral arguments for the motion for summary judgment prior to the start of the trial; which essentially were treated as opening statements for the nonjury trial. V3-2. And the trial court heard the direct

and cross examination of all three of the Appellant's witnesses. V3. Specifically, on direct examination Phyllis Hunter testified that "Justin is the director of CTA and Scott is director of technology." *Id.* at 13. However, on cross examination, Ms. Hunter contradicted herself by agreeing that "they are called coordinators as well." *Id.* at 14. Ms. Hunter also agreed that Robyn Samples is a "director," and that Ms. Samples has authority over Justin and Scott. *Id.* at 14.

Appropriately, the trial court based its ruling off the documents filed in the summary judgment and was able to weigh the credibility of Ms. Hunter's testimony as well as the other witness; which the trial court was authorized to do sitting as trier of fact as well as law. Pichulik at 196. Here, the trial court adjudicated the case on the merits and ruled as follows:

> *Okay. The Court does find [Petitioner] has standing. I think the Exhibit 1 does grant her standing to it.*
>
> *I know there is a not really a dispute of fact, but what I think is very clear is the job description of the two sons. Okay? I don't think the plaintiff has met that burden to say they're a director.*
>
> *You can call, I mean, they call maintenance people sanitation engineers. That don't make them an engineer. So you can call a duck a bird or call them an elephant if you want. That doesn't make it change.*
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> *So whether they're called director and I think Ms. Phyllis Hunter testified that their duties were different than their actual boss. Okay? They call them director and they call them coordinator.*

> *Robin Samples' job was more broad and had more duties. So there is a differential and based on the documents filed in the summary judgment, I'm going to grant the directed verdict.*
>
> R.3, pp.24-26.

Applying the "any evidence" test, the trial court had more than sufficient evidence to determine that the board members' sons do not hold position as "directors." Therefore, trial court did not erroneously grant Appellee's motion to involuntary dismiss Appellant's quo warranto for failing to meet the burden of proof. Thus, the trial court's judgment should be affirmed.

## CONCLUSION

For the reasons set out above, this Court should affirm the judgment of the Superior Court of Walker County.

Respectfully submitted.

*This submission does not exceed the word count limit imposed by Rule 24.*

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## CERTIFICATE OF SERVICE

I certify that on June 12, 2024, I served a copy of this brief by mailing a copy of the brief, contemporaneously with or before filing, to be delivered by United States Postal Service, upon the following:

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